

MAR 06 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD A. LONDON,

Plaintiff - Appellant,

v.

BRETT WILLIAMS, Chief Medical
Officer; et al.,

Defendants - Appellees,

and

EDWARD S. ALAMEIDA, Jr.,

Defendant.

No. 07-15631

D.C. No. CV-04-00067-
GEB/GGH

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Jr., District Judge, Presiding

Submitted January 13, 2009^{**}

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

California state prisoner Richard A. London appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action claiming that prison medical providers inadequately treated him for Hepatitis C and retaliated against him for filing administrative grievances. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a grant of summary judgment. *Universal Health Servs., Inc. v. Thompson*, 363 F.3d 1013, 1019 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because London did not establish a triable issue as to whether he had suffered a serious deprivation in his medical treatment or that defendants had acted with deliberate indifference by not providing him a requested drug that was not medically warranted. *Wilson v. Seiter*, 501 U.S. 294, 298-99 (1991); *see Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004) (recognizing that a mere difference of opinion concerning medical treatment is not a cognizable claim under § 1983).

The district court properly determined that defendants were under no obligation to disclose an expert witness upon whose declaration the district court relied in granting summary judgment, because London was without an attorney in custody, and the district court had not set a trial date. *See Fed. R. Civ. P.* 26(a)(1)(B)(iv) (excepting initial disclosure in actions brought pro se by a person in custody); *Fed. R. Civ. P.* 26(a)(2)(C)(i) (requiring disclosure where ordered by trial court or at least 90 days before trial).

The district court correctly determined that 28 U.S.C. § 1915 does not violate equal protection in requiring the payment of filing fees by prisoners.

Taylor v. Delatoore, 281 F.3d 844, 849-50 (9th Cir. 2002).

The district court properly determined that London's retaliation claim failed because he did not show that the denial of his request for a drug not medically warranted was an adverse action. *See Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir. 2005) (requiring that to succeed in a retaliation claim, a plaintiff must demonstrate an adverse action).

We deny London's motion to file a supplemental brief.

AFFIRMED.